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Comparative Charts of State Statutes Illustrating Barriers to Trade Between States

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REVIEW OF GOVERNMENT PUBLICATIONS

COMPARATIVE CHARTS OF STATE STATUTES ILLUSTRATING BARRIERS TO TRADE BETWEEN STATES. The Marketing Laws Survey, Works Progress Administration, U.S. Government Printing Office, pp. 88, vii. 25 cents.

This compilation is a preliminary report, made in response to a specific request for information by the National Conference on Interstate Trade Barriers. It does not purport to compile all state barrier legislation; nor does it purport to analyze the importance or the significance of the collected materials. It merely presents factual data. It presents the statutes which are alleged by many to be barrier statutes. It leaves for others the challenge of interpretation.

In organization, the monograph, except for a few pages of descriptive material comprises eight charts which set forth the basic statutory regulations on the following subjects: motor vehicle laws, selected dairy laws, oleomargarine laws, selected livestock, egg, and general food laws, general nursery stock laws, liquor laws, state use tax laws, and general preference laws. Although there are obvious omissions in the material collected, perhaps the basic criticism of the work is its tendency to make trade barriers out of all differing and multiple treatment of persons and property by the several states. For example, the collected statutes concerning motor vehicles suggest that all differences in weight, height, length, and equipment regulations amount to trade barriers. Obviously, the differences in regulations must be distressing to the interstate trucker, (and the very collection of these materials must be of great benefit to him in determining quickly his responsibilities in the various states,) but it seems extremely doubtful that these regulations were adopted for the purpose of exclusion. It is equally clear that there is no discrimination, at least in law, against the outside trucker for the same limitations apply to the resident trucker as well.

The case against discriminatory license fees and taxes is not so clear; but even here the higher taxes on the non-resident may in many instances not equal the property tax burden sustained by the resident competitor. Nor can the fact that the interstate trucker may enter several states alter the situation. Cumulative effect upon the trucker is no doubt burdensome but it cannot transform the defensible regulations of a state into an indefensible tariff. It is the result of our federal system. And this is the crux of the entire controversy. Many states with improved administration are making their tax and police power policies a reality. The law has become something more than a declaration of policy; it has become a fact—it is enforced. Thus, those who must now comply find need for a new theory of escape. Federal regulation is obviously not palatable for although it affords uniformity it also threatens more stringent regulation and greater assurance of enforcement. Thus if a case can be made against discriminatory action by states that can be settled by state action, the dangers of increased regulation can be avoided for it may well be

assumed that local pressure groups will join with out-of-state organizations in opposing any increased state regulation so that uniformity, if it is achieved, will be achieved on the level of the least regulation rather than on the level of the greatest.

It would be unfair both to this compilation and to the trade barrier movement generally if attention were not called to the fact that *some* state statutes and the *administration* of others is unquestionably directed toward the exclusion of 'foreign' competition. No defense of such statutes is here intended. Rather the emphasis is to insure that legitimate exercises of the state police power, often dictated by greatly varying local conditions, will not be thought lessly condemned.

The Compilation of the Marketing Laws Survey clearly avoided comment on the significance of the collections it presented. It was requested to present certain information and this it did. It is unfortunate that it did not indicate more specifically, even though this entailed the obvious danger of entering the argument, that statutes directly enacted as discriminatory "tariff walls" and statutory diversity resulting from our federal system do not present the same problem.

Whenever regulation increases the cost of distribution it is probable the cost will be paid by the consumer, thus, the test of the validity of such regulation might be posed in this fashion: if the regulation results from a community demand, expressed through the police or taxing power, for greater health, safety, or security it is reasonable that the consumer should pay the increased cost; if the regulation is the result of pressure group demand of a limited number of vendors or distributors then the increased cost of the product to the consumer is not justified by the demands of the particular community and may be considered an indefensible special group privilege—a barrier to free trade.